STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 121721-001-SF**

Blue Cross Blue Shield of Michigan
Respondent

_____

Issued and entered
this _10th___ **day of November 2011**
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 3, 2011, XXXXX, M.D., authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1952 *et seq*. The Commissioner reviewed the material submitted and accepted the request on June 10, 2011.

The Petitioner is enrolled for health care coverage through the State of Michigan, a self-funded government group. The plan is administered by Blue Cross Blue Shield of Michigan (BCBSM). Petitioner's benefits are described in BCBSM's *Preferred RX Program* certificate of coverage (the certificate).

Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*.

To address the medical issues in this case, the Commissioner assigned the matter to an independent medical review organization which provided its analysis and recommendation to the Commissioner on June 24, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner has suffered from severe and chronic migraine headaches for many years. Her physician requested authorization for the prescription drug Frova to treat her migraines. BCBSM denied coverage. The Petitioner appealed the denial through BCBSM's internal grievance process but BCBSM did not change its decision. BCBSM issued a final adverse determination dated May 23, 2011.

III. ISSUE

Did BCBSM properly deny preauthorization for Frova under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

The Petitioner states she suffers from severe and chronic migraine headaches. This occurred after she had spasmodic torticollis surgery where several nerves were severed during the procedure. The Petitioner states that she has tried multiple prescription medicines without benefit but has a good response with Frova. She maintains she needs Frova to treat her migraine headaches on a daily basis.

In a letter of support to OFIR dated June 15, 2011, the Petitioner's neurologist wrote:

> [Petitioner] is a patient of mine who has severe frequent and chronic migraine headaches. The patient has been tried in the past on Maxalt without benefit. Her last prescription of Maxalt was written on 12/17/09. She has used many other treatments for migraine in the past including Imitrex without benefit. She last tried Imitrex in about 2007. She has had a good response [with] Frova. This is the only medication to which she has responded. We are asking for an exception for her so that she can receive Frova for her headaches. She is having at least 15 headaches per month and often needs 2 Frova tablets for each headache. This is despite taking prophylactic medications. We are requesting a total 31 tablets of Frova per month for her headaches. This is medically necessary.

BCBSM's Argument

In its final adverse determination, BCBSM cited Section 3 of the certificate which describes "Prescription Drugs Not Covered" (pg. 3.1):

> We will not pay for the following:
>
> * * *

> - More than the quantities and doses allowed per prescription of select drugs by BCBSM, unless the prescribing physician obtains preauthorization from BCBSM. . . .
>
> . . . Our clinical pharmacist reviewed the information [Petitioner] provided during [the Managerial-Level Conference], as well as the documentation Dr. XXXXX submitted on behalf of [Petitioner], and it was determined that the information does not support the medical necessity for 31 tablets of Frova. More specifically, there is no indication that the allowed quantity of Frova is being filled on a routine basis. [Petitioner] can fill a prescription for this medication for 12 tablets per month with no preauthorization required. However, [Petitioner] has not purchased this amount each month, so there isn't any indication that an additional quantity would be needed.

Commissioner's Review

The question of whether a 31 tablet prescription of Frova is medically necessary for treatment of Petitioner's condition was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician who has been in practice for more than 18 years and is board certified in neurology.

The reviewer determined that 31 tablets of Frova are not medically necessary for treatment of the Petitioner's condition. The IRO report includes the following analysis and conclusions:

> [T]he member has a history of chronic daily headaches despite the use of prophylactic medication. . . . [T]he information provided for review references the use of Topamax as a prophylactic medication but does not include details about other prophylactic medication use. . . . [T]he member has tried and failed Imitrex and Maxalt. . . . [T]riptans, such as Frova, are for as needed use and not for routine daily or prophylactic use. . . . [F]requent use of triptans can lead to rebound and further worsening of headaches.

The reviewer concluded that 31 tablets of Frova per month are not medically necessary for treatment of the Petitioner's condition.

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principle reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation."

MCL 550.1911(16)(b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner finds BCBSM's denial of the requested quantity of Frova is consistent with the terms of the certificate.

V. ORDER

The Commissioner finds that Blue Cross Blue Shield of Michigan is not required to prior authorize and cover the Petitioner's 31 tablet Frova prescription. BCBSM's adverse determination of May 23, 2011, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner